Testimony of

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Good afternoon, Madam Chair and members of the Subcommittee. I am Kevin Shafer, executive director of the Milwaukee Metropolitan Sewerage District (MMSD) and treasurer of the National Association of Clean Water Agencies (NACWA). First, I would like to thank you for your leadership in bringing this important discussion on clean water before the Congress through this valuable hearing. This is an important topic that receives little attention. NACWA is the only organization dedicated solely to the interests of the nation's public wastewater treatment agencies. Our members are dedicated environmental stewards who work to carry out the goals of the Clean Water Act by treating and reclaiming more than 18 billion gallons of wastewater each day. In Milwaukee, we treat about 150 million gallons of wastewater from 28 communities on a daily basis. When it rains, the system may receive five or six times that amount.

I appreciate the opportunity to testify here today on the *Raw Sewage Overflow Right-to-Know Act of 2007* (H.R. 2452). This legislation is designed to achieve an important goal — ensuring the public's right to know about events that could impact their health and their environment. It is a goal that we in the clean water community endeavor to meet every single day. In two days, we will celebrate the 35th anniversary of the Clean Water Act — one of the greatest and most successful environmental laws ever enacted. We are proud of our work and the gains we have made in restoring the nation's rivers, lakes, estuaries, and coastal waters.

Before I discuss H.R. 2452, it is critical to underscore that meeting the Clean Water Act's goals requires a sustainable partnership among all levels of government and a significant recommitment of resources from the federal government, in particular. Since 1972, the federal government has invested more than $72 billion to help cities construct and upgrade their collection systems and treatment facilities. This money was critical to achieving the water quality improvements of the last 35 years. However, despite the huge sums spent to meet our clean water goals, our nation now faces serious long-term funding shortfalls to meet its vital water and wastewater infrastructure needs. According to EPA and other federal agencies, the nation faces a $300-$500 billion water infrastructure funding gap over the next 20 years.

Despite this growing gap, federal assistance has declined by more than 70 percent, and now local communities shoulder more than 95 percent of the cost of clean water. Municipalities are essentially on their own to address the ever increasing challenges of aging infrastructure, a rapidly growing population, expectations of consistently higher quality service, and more expensive and expansive federal regulations.

It is within this context that H.R. 2452 — and the monitoring and notification provisions it seeks to enact — should be viewed if this bill is to be further considered by the Congress. Sewer overflows continue to pose one of the single biggest challenges for clean water managers everywhere. All sewer systems leak. When it rains, water seeps into the sewer system through cracks in our aging pipes, through illegal storm drainage connections, and through poorly sealed manhole covers. This infiltration and inflow of stormwater into sewer systems is a primary cause of sanitary sewer overflows (SSOs) and is very difficult, from an engineering perspective (some would say impossible), and costly to eliminate altogether.

NACWA members do an unparalleled job of working to maintain their systems to ensure top performance in collecting and treating billions of gallons of wastewater. However, it is important to understand that no matter what we do or how much money we spend, overflows will happen, often resulting from circumstances beyond our control. Despite this reality, NACWA members understand the importance of reducing the number of overflows that reach the nation's waterways each year and are working aggressively to upgrade our systems and build additional capacity to ensure we succeed in that arena.

We also take seriously the notion that the public should be notified of spills that could pose a risk to their health or the environment. Most NACWA members are already subject to notification requirements imposed by EPA regulations and guidance under the Clean Water Act, local ordinance, or state regulations. Communities with combined sewer systems must implement monitoring and notification programs for overflows as part of the nine minimum controls required under EPA's 1994 Combined Sewer Overflow (CSO) policy, which was codified in 2000 in the *Consolidated Appropriations Act for Fiscal Year 2001* (P.L. 106-554). Any *additional* federal legislation on monitoring and reporting should acknowledge the programs that are already in place and ensure that any new requirements do not interfere with existing efforts or impose duplicative, unnecessary, and often costly mandates.

As written, the bill calls for a comprehensive monitoring system to detect overflows as soon as possible. What would such a system entail beyond current regulatory requirements? And how much should a community be expected to spend on monitoring equipment? In fact, several NACWA members have voiced concern that H.R. 2452 could impose an overly broad monitoring regime, one that would prove too costly to many municipalities already struggling to find ways to pay for clean water infrastructure improvements.

Fortunately, in Milwaukee, we have an extensive monitoring program that has been in place for over 10 years that we feel exceeds what H.R. 2452 is requiring. In the 1980s and 1990s, Milwaukee spent nearly $3 billion to reinforce our sewer system to protect Lake Michigan. As part of that program, we built a 19.4-mile-long, 405-million-gallon tunnel system that captures flows from both our combined sewer and separate sanitary sewer systems. Additionally, in 2006, we completed an 89-million-gallon deep tunnel that is devoted to separate sewage only and are currently constructing another tunnel that will add 27 million gallons more to our regional system. These tunnels store the water until it can be treated at one of our two treatment plants. Our stewardship of the water environment is impressive. Since the first tunnel became operational in 1994, we have reduced the number of combined sewer overflows from an average of approximately 60 in 1994 to an average of 2 by 2007. We have also reduced separate sewer overflows from an average of approximately 25 in 1994 to an average of about 2 by 2007.

In order to operate the system to realize this high performance record, we are continually improving our extensive monitoring and notification programs. The monitoring system that was installed in 1994 provided a regional, umbrella coverage of our sewer system. Currently, MMSD is upgrading this system with a $50-million, state-of-the-art technology that will allow us "drill down" into our 300 miles of regional sewers with a complex network of monitors, sensors and computerized weather reporting. This updated system will further help MMSD maximize the use of its wastewater storage systems and treatment plant capacity during rainstorms.

Milwaukee's substantial investment is unique, but many municipalities are spending large sums on overflow control and pollution abatement efforts, and no single approach would be appropriate for every city. As these efforts proceed, communities need the flexibility to work with their state permitting authorities to design and implement monitoring and reporting systems that best meet their needs and the needs of their citizens in an affordable, common-sense way.

The United States has an estimated 640,000 miles of sewer lines.[1] Madam Chair, in your home district of Dallas alone, nearly 4,200 miles of sewer pipe carry wastewater to two treatment plants that can treat 260 million gallons of wastewater per day from 2.3 million customers. A one-size-fits-all approach to monitoring a vast network of pipes, in systems that may vary depending on the geographic region, would simply not be the best option.

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[1] Congressional Budget Office, "Future Investment in Drinking Water and Wastewater Infrastructure." (November 2002).

H.R. 2452 also states that all overflows with the potential to harm public health would trigger the notification requirements. The legislation does not articulate how that determination would be made or by whom. Some members have expressed concern that even minor spills of a few gallons that can occur during system routine maintenance of a sewer line could meet the notification requirement threshold. Currently, in many communities with monitoring and reporting requirements, local health departments determine whether an overflow is big enough to warrant public notification in order to avoid unnecessarily alarming the public.

In Milwaukee, we take protecting our citizens and the environment very seriously. While we have been able to substantially reduce the frequency of sewer overflows, some still occur. So in order to make sure we provide all the information necessary to our citizens, we strive to "over report" these occurrences. What I mean by this is that we notify not only our regulators, the Wisconsin Department of Natural Resources, of an overflow event, as currently outlined in H.R. 2452, but we also notify the public health department, local media outlets, and scientists with the University of Wisconsin–Great Lakes WATER Institute, which uses these occurrences as opportunities to gather real-time scientific data to help us plan for future water quality improvements.

Additionally, during a storm, even before a sewer overflow might occur, we have posted on our website, *www.mmsd.com*, a "Storm Update" page which shows in real time the volumes of stormwater and sewage we have kept from overflowing. During those large events, the public can log onto our website and see, in five- minute intervals, how much the tunnel system is storing and how much water is being treated at our treatment plants. Then, the system provides hourly updates of the rainfall totals from our extensive rainfall monitoring network. If an overflow does occur in our system, we also post these immediately on this website.

No one disputes the importance of educating our citizens about public health matters. But rather than addressing these issues in a piecemeal manner, NACWA urges a comprehensive approach to SSOs. EPA should promulgate SSO control regulations, including public notification standards. In early 2001, EPA attempted to issue such a regulation that looked broadly at the management and reduction of SSOs. While NACWA did not agree with all aspects of the proposal, the rulemaking embraced a flexible approach to monitoring and notifying the public of spills that allowed municipalities to work with their state regulators and affected entities on a framework for case-by-case notification based on the nature of the event. The framework in the proposal acknowledged the complexities of immediate notification and provided for a flexible, system-specific overflow response

to identify and clarify specific notification responsibilities and notification protocols. Perhaps this language would be a good starting point for the committee to consider if it moves forward with H.R. 2452.

Due to the complexity of the regulatory issues, EPA never completed work on the SSO rule. Despite the 2001 draft's numerous flaws — and there were many — it at least would have forced a broad national discussion on a holistic approach to SSO control, a discussion that is long overdue. Federal guidance in this area is sorely lacking. In the absence of any federal policy for SSOs, NACWA has worked with other water sector organizations to develop consensus voluntary practices for the management of collection systems with the goal of further controlling overflows. NACWA has also worked collaboratively with fellow environmental organizations on other key wet weather issues and believes a similar collaborative approach can be beneficial in the context of an SSO rule.

Finally, to further help cities address wet weather and other critical clean water infrastructure challenges, Congress should establish a national clean water trust fund. Again as we look to the 35th anniversary of the Clean Water Act, it is vital to recall that success has been achieved through a federal, state, and local partnership. Now is the time for the federal government to recommit itself to helping communities ensure clean and safe water for future generations. NACWA believes this can best be achieved through a meaningful, long-term and sustainable source of revenue in the form of a national clean water trust fund. We're not asking the federal government to do it all but rather to provide truly meaningful assistance with financing the gap between what is now spent at the local level and what should be spent to meet enforceable Clean Water Act requirements. Municipalities will continue to shoulder the vast majority of the cost of clean water, and local communities are proud to play the leading role in fulfilling these obligations. But as Congress contemplates potentially far-reaching requirements, such as those in H.R. 2452, a federal recommitment to investing in our water infrastructure should be a higher priority. We look forward to working with you to ensure continued progress on improving the health of our nation's waters. Thank you.